

JUL 17 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

VAN CAMP & BENNION, P.S. a
Professional Service Corporation,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA; PAUL
BEENE, District Director Of Internal
Revenue Washington District,

Defendants - Appellees.

No. 02-35380

D.C. No. CV-94-00409-CI

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Cynthia Imbrogno, Magistrate, Presiding

Submitted June 20, 2003**

Before: SCHROEDER, Chief Judge, BEEZER and HAWKINS, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Taxpayer Van Camp & Bennion, a Professional Service Corporation, appeals the district court's grant of summary judgment in favor of the United States. We previously remanded a related case to the district court to consider whether this taxpayer had reasonable cause for failure to deposit and pay timely federal employment taxes. See Van Camp & Bennion v. United States, 251 F.3d 862, 867-68 (9th Cir. 2001). The district court concluded that reasonable cause did not exist. We affirm.

The taxpayer contends that its financial difficulties constituted reasonable cause for its failure to pay withholding taxes. The record shows, however, that the corporation was receiving large monthly deposits that were sufficient to meet its tax obligations. The record also establishes that during the relevant tax years, the corporation was paying its president over \$100,000 per year. The corporation therefore did not show that it "exercised ordinary business care and prudence in providing for payment of [its] tax liability." 26 C.F.R. § 301.6651-1(c)(1).

The taxpayer also argues that the illness of its president constitutes reasonable cause for the failure to pay taxes. The record does not support this contention. The undisputed evidence shows that the corporation continued to operate during the relevant time period, and continued to attract business. The

president remained available to discuss business during his illness, and was not the only person with authority to conduct the corporation's financial transactions.

AFFIRMED.